

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00

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E.O. 11652: N/A

TAGS: ETRD, PL

SUBJECT: ANTIDUMPING CASE -- ELECTRIC GOLF CARTS FROM POLAND

REF: (A) STATE 172161, (B) STATE 169223

1. SUMMARY: I AM VERY DISAPPOINTED TO LEARN THAT LITTLE OR NO PROGRESS WAS MADE TOWARD RESOLUTION OF THE GOLF-CART DUMPING CASE DURING THE VISIT OF VICE MINISTER STRZELECKI. I BELIEVE THAT BOTH POLICY AND LOGIC ARGUE STRONGLY FOR CONSTRUCTING A NEW FAIR VALUE ON THE BASIS OF THE CALCULATIONS FOR 1975. AS SECRETARY SIMON WAS MADE AWARE DURING HIS JUNE VISIT TO WARSAW, THE POLISH LEADERSHIP CONSIDERS THIS A VERY SERIOUS MATTER AND A DANGEROUS PRECEDENT FOR THEIR TRADE WITH THE U.S. THE ISSUES ARE NOW SUFFICIENTLY CLEAR AND IMPORTANT TO WARRANT CALLING THE CASE TO THE ATTENTION OF DEPUTY SECRETARY ROBINSON AND SECRETARY SIMON. END SUMMARY

2. THERE SEEM TO BE THREE BASIC QUESTIONS TO BE
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CONSIDERED IN THIS CASE. FIRST , DID THE POLES

ENTER INTO SUFFICIENT LONG-TERM CONTRACTUAL UNDERSTANDINGS IN 1975 TO ALLOW THE FAIR VALUE TO BE SET AT THE 1975 LEVEL? SECOND, IF WE DETERMINE THAT THE POLES DID NOT ENTER INTO SUFFICIENT UNDERSTANDINGS, MUST FAIR VALUE BE SET AT A U.S. PRODUCER'S PRICE LEVEL? THIRD, ARE THERE POLICY CONSIDERATIONS WHICH ENTER INTO THE DETERMINATION OF FAIR VALUE?

3. I UNDERSTAND THE POLES ARE STILL TRYING TO SHOW TO TREASURY'S SATISFACTION THAT THEY REACHED LONG-TERM UNDERSTANDINGS WITH DISTRIBUTORS IN 1975. WITHOUT PREJUDICING FUTURE PRESENTATIONS WHICH THE POLES MAY MAKE IN THIS REGARD, I WOULD LIKE TO ADDRESS THE OTHER IMPORTANT QUESTIONS. I WOULD ALSO LIKE TO POINT OUT THAT THE CIRCULAR NATURE OF OUR QUESTIONS CONCERNING 1975 CONTRACTS IS, TO PUT IT MILDLY, FRUSTRATING FOR THE POLES. SINCE THERE ARE NOW NO OTHER EXPORTERS OF GOLF CARTS TO THE U.S., THE POLES MUST SHOW EVIDENCE, PREFERABLY IN WRITING, OF LONG-TERM CONTRACTS IN ORDER TO SET THE FAIR VALUE OF THE GOLF CARTS. THE UNCERTAINTY OVER FUTURE FAIR VALUE, HOWEVER, WAS THE KEY CONSTRAINT IN ALL OF THEIR CONTRACT NEGOTIATIONS.

3. I CAN UNDERSTAND WHY, FROM THE LEGAL STANDPOINT, IT IS DESIRABLE TO PROCEED ON THE BASIS OF PRE-1976 CONTRACTS IN DETERMINING FAIR VALUE FOR THIS AND THE NEXT FEW YEARS. I AM NOT PERSUADED, HOWEVER, THAT THE LEGAL REQUIREMENTS HERE ARE SO COMPELLING THAT WE MUST ESTABLISH FAIR VALUE ON THE BASIS OF A U.S. MANUFACTURER'S PRICES. I HOPE THAT WE COULD FIND SOME WAY TO DEAL WITH THE LOGIC OF THE POLISH CASE AND THE POLICY ISSUES PRESENTED.

4. MOST IMPORTANTLY, I BELIEVE THAT WE SHOULD AVOID THE STRICT EQUATION OF FAIR VALUE WITH U.S. PRODUCER PRICES IF A SENSIBLE CASE CAN BE MADE FOR ANOTHER CONSTRUCTION. WITH REGARD TO POLISH LIMITED OFFICIAL USE

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GOLF CARTS, IT WOULD MAKE GOOD SENSE TO DETERMINE FAIR VALUE BASED ON THE 1975 CANADIAN MANUFACTURER'S PRICE, WITH PROVISION FOR AUTOMATIC INCREASES DUE TO INFLATION. AFTER DETAILED EXPLANATION ON OUR PART, THE POLES FINALLY ACCEPTED THAT THEIR SELLING PRICE SHOULD BE EQUATED WITH THAT OF THE MUCH SMALLER CANADIAN PRODUCER. THIS INITIAL EQUATION WAS AT BEST A ROUGH ONE;

THE APPLICATION OF AN INFLATION INDEX TO THE CANADIAN PRICE OF 1975 WOULD NOT BE A MUCH CRUDER PROCEDURE FOR DETERMINING FAIR VALUE. IN FACT, I UNDERSTAND THAT AN INFLATION INDEX WAS APPLIED TO THE 1975 FAIR VALUE IN ORDER TO DETERMINE THE EX POST FACTO FAIR VALUE FOR 1973.

5. AS EVIDENCED BY THE STATEMENTS OF VICE PREMIER WRZASZCZYK AND FINANCE MINISTER KISIEL TO SECRETARY SIMON LAST MONTH, THE POLISH LEADERSHIP CONSIDERS THIS A DANGEROUS PRECEDENT FOR TRADE WITH THE U.S. THEY POINT OUT THAT THE POLISH CASE, TOO, HAS EXTENUATING CIRCUMSTANCES, AND THEY WILL BE WEIGHING OUR DETERMINATION AGAINST THE OUTCOME OF OTHER CASES.

6. ONE COULD ALSO REDUCE THIS CASE TO ITS LOGICAL ABSURDITY. IF WE REFUSE TO SET FAIR VALUE ON THE BASIS OF THE 1975 LEVEL, THE POLES WOULD BE BETTER OFF TO ENCOURAGE A WILLING LDC TO START PRODUCTION FOR THE U.S. MARKET. THIS WOULD SET A FRAME OF REFERENCE FOR FAIR-VALUE CALCULATION, BUT WOULD HARDLY BENEFIT U.S. PRODUCERS.

7. THE ABOVE ARGUMENTS ARE BASED ON THE ASSUMPTION THAT THE LEGAL CONSIDERATIONS INVOLVED ARE NOT OVERWHELMINGLY COMPELLING. WE DO NOT HAVE THE PROPER VANTAGE POINT FOR EVALUATING THE POSSIBILITY OF LEGAL CHALLENGES TO A TREASURY DETERMINATION TO SET FAIR VALUE ON THE BASIS OF THE 1975 LEVEL PLUS INFLATION. I BELIEVE THAT THIS IS A RISK WHICH WE SHOULD AT SOME POINT BE WILLING TO TAKE. THIS HAS BEEN, AFTER ALL, LIMITED OFFICIAL USE

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THE MOST BIZARRE OF TEST CASES, AND TREASURY HAS CERTAINLY BEEN THOROUGH AND PAINSTAKING IN ITS EFFORTS TO FOLLOW THE LAW. AT WORST, AN ADVERSE COURT DECISION WOULD BE UNDERSTANDABLE TO THE POLES AND WOULD NOT BEAR THE POLITICAL STIGMA WHICH CAN BE ASSOCIATED WITH AN EXECUTIVE DETERMINATION.

8. I URGE THAT A DECISION BE TAKEN PROMPTLY ON THIS MATTER. THE LONGER WE DELAY AND THE LONGER POLISH RESOURCES ARE IDLED, THE MORE THE PRAGMATISM AND SPIRIT OF COOPERATION WHICH WE HAVE FOUND ON THIS ISSUE WILL GO SOUR.
DAVIES

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